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 Register of Deeds Orange COUNTY, NC  
 BY: Deputy *Wendy R. Dyer*

**FOR MULTIPLE PIN SHEET  
 SEE BOOK 3217 PAGE 329**

**Prepared by and return to: Wayne R. Hadler, Beemer, Savery, Hadler & Jones, PA**

**DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**FRANKLIN GROVE HOMEOWNERS ASSOCIATION, INC**

THIS DECLARATION, made on the date hereinafter set forth by Capkov Ventures, Inc. , a North Carolina corporation, with its principal office located in Carrboro, Orange County, North Carolina at 203 Stable Road, Carrboro, NC 27510, hereinafter referenced to as "Declarant";

THIS DECLARATION is exactly the same DECLARATION that was recorded on March 20, 2003 in Book 2932, Page 245, Orange County Registry with the exception of the following amended provisions: **Article IV, Section 3 (a); Article IX, Sections 1, 5 and 11; and Article X, Section 1.**

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in or near the Town of Chapel Hill, County of Orange, State of North Carolina, which is more particularly described as BEING all that certain property as shown on a survey entitled "Final Plat Franklin Grove Townhomes" prepared by Riley Surveying, P.A. and last revised on March 4, , 2003 and recorded in Plat Book

92, Page 20, Orange County Registry. A copy of the aforesaid plat is attached hereto as Exhibit "A" and incorporated by reference herein;

AND WHEREAS, Declarant intends to construct a maximum of forty-eight (48) townhomes on the forty-eight (48) lots shown on the above referenced plat and survey in Buildings consisting of two to six (2-6) townhome lots which will be divided along common party walls into in such a configuration substantially similar to the one shown on the above referenced plat. The common walls may be altered due to the individual townhomes final plan design, or the deletion, not addition, of certain units. Such revisions will be subject to approval of the Town of Chapel Hill and will be made prior to conveyance to a third-party purchaser.

NOW, THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed, occupied, used or transferred subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Preamble: The purpose of this instrument is to protect the value, desirability and attractiveness of the aforesaid real property; to insure the best use and the most appropriate development and improvements of each Lot located therein; to protect the owner of each Lot against such improper use of surrounding Lots as will depreciate the value of said owner's property; to preserve, as far as practicable, the natural beauty of said property; to guard against the construction of poorly designed or proportioned structures and/or structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; and to enhance, as far as is practical, the value of investments made by owners of Lot therein. To that end, Declarant herein creates a Homeowners' Association and vests it with certain powers and authority consistent with the intentions expressed in this Preamble. Lastly, said restrictions, covenants and conditions shall be appurtenant to and run with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to Franklin Grove Homeowner Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 3. "Building" shall mean and refer to a multi-unit structure containing townhomes, constructed or erected on the Property.

Section 4. "Common Elements" shall mean all real property owned by the Association for the common use and enjoyment of the Owners or members or designated classes of members of the Association, including Common Space and open space, drainage facilities, sewer lines, water lines utility easements and all recreation areas as may be designated on any subdivision map of the Property or by the Association. The Common Elements to be owned by the Association at the time of the conveyance of the first Lot is all of that Property other than the Lots.

Section 5. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against members;
- (b) Expenses for maintenance of the townhomes as provided in this Declaration;
- (c) Expenses of administration, operation and advancement of the association, and expenses for the maintenance, repair, or replacement of the Common Elements and Limited Common Elements;
- (d) Expenses declared to be Common Expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase, or as the Association may deem appropriate to purchase;

- (f) Ad valorem taxes and public assessment charges lawfully levied against Common Elements;
- (g) The expense of the maintenance of private drainage (including stormwater detention devices) and utility easements and facilities located therein which are within the boundaries of the Property; and
- (h) Any other expenses determined by the Board or approved by the members to be Common Expenses of the Association; and
- (i) All charges for utilities used in connection with maintenance and the use of the Common Elements; and
- (j) All expenses related to the fire protection systems installed to buildings within Franklin Grove to include but not be limited to water service fees and other associated water supply fees, the maintenance and servicing of water lines, valves, meters, backflow, preventers and sprinklers. The fact that some Buildings containing Finished Lots may require fire lines while other Building containing Finished Lots may not require fire lines will not be a basis for additional indexing of the uniform rate described in Article IV, Section 7, as all Finished Lot Owners will share in the reduced insurance cost associated with fire lines installed on the Property.
- (k) The annual premium related to the continuation of termite warranty and protection.

Section 6. "Declarant" shall mean and refer to Capkov Ventures, Inc., its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose, or the Owners resulting from a sale of the property at foreclosure or a transfer in lieu of foreclosure.

Section 7. "Limited Common Element" shall mean those portions of the Common Elements that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, and such other similar areas as may be designated by a subdivision map of the Property or the Association.

Section 8. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property, as such maps may be from time to time amended, with the exception of the Common Elements.

Section 9. "Member" shall mean and refer to every owner or entity who holds membership in the Association.

Section 10. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Person" shall mean and refer to any individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

Section 12. "Phase" shall mean and refer to any additional areas, if any, adjacent to and brought into the Properties. Phasing shall be accomplished by amendment to this Declaration

which shall require execution only by Declarant, or his successors and assigns. Once the phasing amendment is recorded, the new area affected thereby shall become a part of the Properties subject to the Declaration.

Section 13. "Property" shall mean and refer to that certain real property hereinbefore described on Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association as this Declaration may provide.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas and recreation areas of the Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the ordinances and laws of the Town of Chapel Hill, the right of the Association to charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Common Elements;
- (b) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Elements facilities, by an Owner for any period during which any assessment against his Lot remains unpaid.
- (c) the right of the Association to dedicate, sell, lease, or transfer all or any part of the Common Elements, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes as specified herein may be made by the Association without consent of the members;
- (d) the right of the Association to limit the number of guests of members;
- (e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage the Common Elements, and the rights of such mortgage in the Common Elements shall be subordinate to the rights of the Association and homeowners hereunder;

- (f) the right of the individual members to the use of parking spaces as provided in this Article;
- (g) The right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements and to create Limited Common Elements.
- (h) The right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Property and all lands included in subsequent phases.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his use and right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property subject to the terms of Article II §1(b) of this Declaration.

Section 3. Title to the Common Elements. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot associated with the Property, except encumbrances of utility service, access, storm drainage and other similar service or utility easements. Similarly, the Declarant will convey to the Association Common Elements which are a portion of any additional property as the same is annexed in the future at the time of conveyance of the first Lot located on that additional property; title to the Common Elements will be conveyed free and clear of all encumbrances and liens except utility service access, storm drainage, and other similar service or utility easements.

Section 4. Parking Rights and Regulations. All automobiles shall be parked on the driveways or in garages located on each Lot or within the designated on street parking areas as regulated to the Town of Chapel Hill. Ownership of each Lot shall entitle the owner or owners thereof to the use of at least two automobile parking spaces, which shall be as near and as convenient to the front door of each Lot as reasonably possible, together with the right of ingress, egress and regress in and upon said parking areas from the adjoining lot as may be necessary. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on the Property or on the right of way of any streets adjoining the Property by any Lot Owner, its family members, guests, tenants or contract purchasers, unless the expressed written consent is granted in writing by the Architectural Review Board of the Association. The repair or extraordinary maintenance for automobiles or other vehicles on common elements is prohibited.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B member shall be the Declarant and shall be entitled to four (4) votes for each Lot owned, including Lots later added to pursuant to annexation of additional property as set forth in this Declaration. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot owned on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, such additional lands are annexed to the Property without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article VII below, or
- (b) ten (10) years from the date of recording of this declaration.

Section 3. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any such Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, and (3) special assessments for purchase and reconstruction of townhomes as hereinafter defined, all as hereinafter provided. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The assessment for each Lot which is owned by the Declarant and has not been conveyed to a third-party purchaser shall be ten (10%) percent of the annual assessment of a Finished Unit that has been conveyed to a third-party purchaser. Notwithstanding the above, the Declarant shall not be subject to any special assessments of any kind levied by the Association.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy a special assessment on Finished Unit to secure the liability of the Owner thereof to

the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date established by the Board, and further covenants that if said assessment shall not be paid within sixty (60) days of the due date, the amount of such assessment shall be in default and become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. In accordance with Article VII, the assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the residents of the Property and in the particular, but not limited to, for the acquisition, improvement and maintenance of Property, services, amenities and recreational facilities, for the exterior maintenance of the Buildings and landscape maintenance and for the use and enjoyment of the Common Elements, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, the procurement and maintenance of insurance in accordance with the Declaration or the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

- (a) Initial Maximum Assessment. To and including December 31, 2003, the maximum annual assessment shall not exceed Two Thousand Three Hundred Forty Dollars (\$2,340.00) per Finished Unit that has been conveyed to a third-party.
- (b) Increase by Association. From and after December 31, 2003, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of ten (10%) percent or the percentage increase reflected in the U.S. City Average, Consumer Price Index - United States and selected areas for urban wage earners and clerical workers, all items most recent index and percentage changes from selected dates, (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for that twelve-month period ending the immediately preceding November 30th.
- (c) Increase by Members. From and after December 31, 2003, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

- (d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of ten (10%) percent or the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.
- (e) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
- (f) Lot Assessment. Notwithstanding any provision herein to the contrary, the assessment for each Lot which is not a Finished Unit shall be ten (10%) of the assessment for a Finished Unit. This provision shall apply whether or not Declarant owns the Lot.
- (g) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, any extraordinary maintenance, and in connection with exterior maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, or any shortfall of insurance proceeds necessary to replace or repair Finished Units as a result of fire or other hazard, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. The Declarant shall not be subject to any Special Assessment for Capital Improvements.
- (h) Special Assessments for Maintenance. Special Assessments for maintenance will be prorated in relation to the square footage of each unit divided by the total number of square footage of finished and conveyed construction. This will aid in the equitable distribution of cost associated with major repairs that may occur over the life of the community. By way of example, in the event that you owned a 2000 square foot townhome at Franklin Grove and there were a total of 100,000 square feet of finished townhomes your share of any assessment would be 2% of the total assessment.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and any Limited Common Elements which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 30 days or more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six (66%) percent of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the

required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments will be fixed at a uniform rate for all Lots and Living Units. However, the uniform rate for all Lots will include an index rated in accordance with the cost of hazard insurance relative to the insured value of each Finished Lot. Both annual and special assessments may be collected on a monthly, quarterly, semi-annual or annual basis at the election of the Board of Directors. Provided, however, that the annual assessment for Lots which are not Finished Units shall be ten percent (10%) of the regular assessments for Finished Units and Lots which are not Finished Units are not subject to special assessments.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Elements to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

Section 9. Two Months Initial Working Capital. In addition to the regular assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to that Lot Owner, pay to the Association a sum equal to two (2) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with the regular assessment funds. This working capital amount shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 10. Effect of Nonpayment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall be subject to a twenty-five (\$25) late fee or bear interest from the due date at the maximum allowable interest rate, whichever amount is greater. The Association may bring an action of law against the Owner personally obligated to pay the same plus interest, cost, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after sixty (60) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall

include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of liens, the same shall be satisfied of record.

Section 11.      Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to said mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, such unpaid Common Expense shall be deemed to be Common Expenses collectible from all of the lot owners, including such purchaser, his heirs, successors, and assigns. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12.      Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V

### ARCHITECTURAL CONTROL

No site preparation (including, but not limited to, clearing of trees, grading, trenching) or the erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, screens, plantings or other structure shall be commenced, erected, placed, altered or maintained upon the Property or any Lot, nor shall any exterior addition to, or change, or alteration therein be made to any improvement, including but not limited to fences, landscaping, roof shingles, paint colors and the like by Owner, other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, exterior design, colors, siding, location and elevations of the proposed improvements shall have been submitted to, and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until such time as the last Lot within Franklin Grove is conveyed to a third-party purchaser, and thereafter, the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. Requests for Architectural approval shall be made by Certified Mail, return receipt requested. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been received by it, approval will not be required; and this Article will be deemed to have been fully complied with; provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing.

No fences shall be constructed other than those fences originally selected by the Declarant or subsequently approved by a unanimous vote of the Architectural Committee.

Upon request the Declarant, Board or the Architectural Committee shall provide any Owner with a letter stating that any such work plans and specifications have been approved and the same may be relied upon by third parties. The Association shall not be responsible for any

defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications.

Refusal of approval of such plans, location or specifications, may be based upon any grounds deemed sufficient, including purely aesthetic and environmental, in the sole discretion of the Board or Committee.

The Association shall have the right, at its election, but shall not be required, to enter upon any of the Property of an Owner and remove any unauthorized improvements at the Owners cost, after providing the Owner in written notice that the Owner has ten (10) days to remove the unauthorized improvements.

Any reference to "Association" in this Article shall mean the Board or the Architectural Committee, if vested with approval by the Board.

## ARTICLE VI

### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Approval of Annexation. Annexation of additional property, except as provided in Section 2 of this Article VII, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days or more than 60 days in advance of the meeting setting forth the purposes of the meeting. The presence of members or of proxies entitled to cast sixty-six percent (66%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class B membership are not present or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. Annexation by Declarant. If within ten (10) years of the date of recording of this document, the Declarant should acquire and develop additional land adjacent to the Property, or adjacent to property annexed by Declarant, (land adjacent shall include land across a street from the Property) such land may be annexed by the Declarant without the consent of members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association.

Section 3. Recording Annexation Documents. Annexation of additional lands shall be accomplished by recording in the Office of the Register if Deeds in the county in which the Property is located, a Declaration of Annexation, approved by either the Town of Chapel Hill Attorney or his or her deputy and, duly executed by the Declarant if the Declarant has the right to annex pursuant to Section 2 above (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be

deemed annexed to the Property on the date of recordation of the Declaration of Annexation, and in the case of annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

Section 4. Annexed Common Elements. Subsequent to recordation of the Declaration of Annexation by the Declarant, and prior to the conveyance of the first Lot therein, the Declarant shall deliver to the Association one or more deeds conveying any Common Elements within the lands annexed as such Common Elements are developed. Title to the Common Elements shall conform to the requirements of Article II, § 2.

## ARTICLE VII

### MAINTENANCE

Section 1. General Provisions. As set forth in the Preamble as well as in Article Four, Section 2, the Board of Directors of the Franklin Grove Homeowners Association shall be responsible for maintenance and upkeep of the Common elements including recreation areas of Franklin Grove as well as the exterior maintenance of each lot within the Properties. To that end, each Lot Owner herein grants to the Franklin Grove Homeowners Association, its successors and assigns, agents, employees and licensees, an exclusive easement to come upon said Lot at reasonable times for the sole and exclusive purpose of doing such exterior or landscape maintenance as set forth in Article Four, Section 2. In addition to those matters set forth in Article Four, Section 2, from the Annual Assessment or any duly voted upon Special Assessment, the Association shall provide funds for each Lot for necessary repairing and replacing roofs, gutters, downspouts, siding, constructed by the Declarant or subsequently by the Association, re-painting and/or re-staining original exterior surfaces and all other structural exterior improvements, excluding the replacement of glass surfaces, screens, awnings, HVAC or ventilation equipment, and any maintenance to approved structural additions to the initial dwelling unless this maintenance has been affirmatively assumed by the Board of Directors in writing at the time the structural addition was approved.

Section 2. Authority Granted to the Town of Chapel Hill. Declarant and subsequently, when Declarant has turned over the affairs of Franklin Grove to the Homeowners' Association, the Association shall be responsible for maintenance of the recreation area and stormwater detention basins located within Franklin Grove. In the event either or both entities fail to do so, Declarant, for itself, its successors and assigns, including the Franklin Grove Homeowners' Association, herein gives and grants to the Town of Chapel Hill the right and authority to promulgate necessary rules and regulations and/or to enter onto the recreation area and/or stormwater detention basins of Franklin Grove in order to enforce the maintenance of same if either or both are not adequately maintained to Town standards by either Declarant or the Association, including the authority to assess the costs for such maintenance against each Lot in Franklin Grove and to collect any unpaid assessments through procedures provided by North Carolina General Statutes Chapter 160A, Article 10, or other methods allowed by law; provided, however, that this provision shall not obligate the Town of Chapel Hill to assume any responsibility for the recreation areas and/or stormwater detention basins.

Section 3. Yard by Association. The Association shall provide maintenance of the front and side yards of such lot that is not confined by courtyard wall or other impediments. The maintenance shall include, but is not limited to mowing, edging, blowing, mulching, seeding aerating, fertilization, pest & disease control, pruning and replanting of Association or Declarant

installed trees or shrubs, and cleaning of the gutters. The Association will not be responsible for snow or ice removal from the streets, walks, or common elements.

The Owner of any Lot may elect to plant trees, shrubs, flowers and grass in the rear yard and shall also have the sole maintenance responsibility of his rear yard, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the dwelling and the remaining yard spaces. No such maintenance by a Lot Owner of his rear, front or side yard shall reduce the assessment payable by him to the Association. If in the opinion of the Association any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period at the expense of the Owner. The Owner shall not plant any perennial vegetation in the front yard except with the prior written approval of the Association as stipulated in Article V.

Section 4. Townhome Exterior by Association. The Association shall provide exterior repair and maintenance for each Building which is subject to assessments as follows: Paint, repair and or replace gutters; repair and or replace roofs, chimneys, exterior building surfaces including brick touch up, walks, mailboxes, fences, party walls or any other walls installed by the Declarant or the Association, and all other exterior improvements initially completed by Declarant or subsequently by the Association. The exterior repair and maintenance by the Association shall not include gas grills, glass surfaces or screens even if installed or constructed by the Declarant or Association and all improvements within the courtyard of the individual Lot or areas secured by the Owner or the repair or reconstruction of any improvements on any lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect.

Section 5. Damage by Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or tenants or contractors, guests, or invitees, or contract purchasers the cost of such maintenance or repairs shall be added to, and become part of, the assessment to which such Lot is subject.

Section 6. Inspection Rights Reserved. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, the right to unobstructed access over and upon each Lot or Finished Unit at all reasonable times for inspection and to perform maintenance as provided in this Article.

Section 7. Casualty Loss Not Included. Maintenance and repairs under this Article arise from normal usage and weathering and do not include maintenance and repairs made necessary by fire or other casualty or damage.

## ARTICLE VIII

### USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot, parking of vehicles, noise or nuisance violations and use of the Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2.        Use of Property. No portion of the Property (except for the temporary office of the Declarant and/or model townhouses used by Declarant) shall be used except for single-family residential purposes and for the purposes incidental or accessory thereto.

Section 3.        Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood. No nuisances shall be permitted within the neighborhood, nor shall any use of practice be permitted which is or becomes an unreasonable source of annoyance to the Owners or which unreasonably interferes with the peaceful use and possession thereof by unit owners, except construction by the Declarant of the balance of the unsold homes.

Section 4.        Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances, are not a nuisance to other Owners, and are kept inside during the period of 8:00 p.m. to 7:00 a.m. Provided however, a pet may be walked while on a leash during the period from 8:00 p.m. to 7:00 a.m. No outside housing and fencing for pets shall be located on any lot without the prior written approval of the Architectural Committee. At the sole discretion of the Board, the Board of Directors may require that pets, which it deems to be a nuisance, be kept inside the Living Unit and not in the yard.

Section 5.        Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance, applicable to residential use, for the Property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his townhome or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

Section 6.        Offensive Behavior. No unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies including but not limited to the Town of Chapel Hill having jurisdiction thereof shall be observed. All laws, order, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

Section 7.        Structural Integrity. Nothing shall be done in or to any Building or in, to, or upon any of the Common Elements which will impair the structural integrity of any building, or portion of the Common Elements or which would impair or alter the exterior of any Building or portion thereof, except in the manner provided in this Declaration.

Section 8.        Business. Except as permitted by applicable governmental regulations, no industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except that the Declarant or its agents may use any unsold townhomes for sales or display purposes or office purposes.

Section 9.        Signs. No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Building, or any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant

and any mortgagee who may become Owner of any Lot, or their respective agents, may place "For Sale" or "For Rent" signs on any unsold or unoccupied townhomes and in suitable places on the Common Elements provided, however, that during the development of the Property and the marketing of townhomes, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing.

Section 10.      Alterations. No person shall undertake, cause, or allow any alteration or construction on or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

Section 11.      Common Elements Use. The Common Elements shall be used only for the purpose for which they are intended and reasonably suited and which are incident to the use and occupancy of the townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws. Nothing shall be done or maintained on any Lot or upon the Common Elements which would be in violation of any law. No waste shall be committed upon any limited or general Common Elements. No part of the limited or general Common Elements shall be used for commercial activities of any character.

Section 12.      Parking. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on the Property, Common Elements, or on any right of way by any Lot Owners, their family members, guest, tenants or contract purchasers without the expressed consent of the Association. All permitted vehicles must be parked in a closed garage or in a driveway. Storage of non-licensed vehicles without current inspection and registration is not permitted.

Section 13.      Leases. With the exception of a lender in possession of a Finished Unit following default in a mortgage foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no unit owner shall lease his Living Unit for transient purposes, or in any event for any period less than three months. No unit owner shall lease or sub-lease less than the entire unit. All leases shall provide that the lease is subject in all respects to the provisions of the Declaration, Bylaws and Rules and Regulations, and that a failure by the lessee to comply with the terms of such documents shall be a default of the lease. The Owner shall provide to the Association a copy of any lease affecting the Finished Unit.

Section 14.      Trash. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used building materials or materials or trash of any other kind shall be permitted within any unit (including balconies, decks, and terraces) or upon any limited or general Common Elements. Trash and garbage containers shall not be permitted to remain in public view except on designated pickup days. Containers must be removed from public view by daylight the day following pickup. Repeated violation of this covenant will result in penalties to the Lot Owner as determined by rules promulgated by the Association.

Section 15.      Setback Lines. Setback Lines: Shall be consistent with Town of Chapel Hill current zoning regulations.

Section 16.      Satellite Dishes and Antennas. No satellite dish or television antenna may be mounted on the exterior of a Franklin Grove Townhome in such a manner that it is visible from the public streets within the community. Satellite dishes may not exceed one (1) meter in diameter without the written consent of the Architectural Review Committee of the Association. All installations to the exterior of the Townhome Buildings must be approved by the Architectural Review Committee. Plans for proposed installations must include a description of location,

mounting specifications and size of device to be installed. The Architectural Review Committee may withhold permission to install a satellite dish for any good faith reason it deems appropriate including but not limited to the aesthetics of the proposed dish, as long as the ARC does not violate regulations set up by the Federal Communications Commission or other governmental agency. The owner of the satellite dish or antenna shall be wholly and solely responsible for any damage caused to the Building or Common elements by the installation or use of either an antenna or satellite dish.

## ARTICLE IX

### EASEMENTS

**Section 1. Utility Easements and Rights of Way.** All of the Property, including Lots and Common Elements, shall be subject to such easements and rights of way for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Elements or Lots conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

**Section 2. Adjoining Areas.** Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. If an encroachment occurs as a result of settling or shifting of any building, or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be valid, an easement for such encroachment and for the maintenance of the same.

**Section 3. Unintentional Encroachments.** In the event that any building on a Lot shall encroach upon the Common Elements or upon any other Lot for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance and maintenance of such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Elements onto any such Lots for so long as such encroachment shall naturally exist.

**Section 4. Overhanging Roofs and Eaves.** Each owner within the Properties is hereby declared to have an easement, and the same is hereby granted by the Declarant, over each adjoining Lot and/or the Common Elements, as the case may be, for over-hanging roofs and eaves and the maintenance thereof.

**Section 5. Easement for the Benefit of the Town of Chapel Hill or Other Governmental Agencies.** An easement is hereby established for the benefit of the Town of Chapel Hill, or other governmental agency and other quasi municipal entities such as Orange Water and Sewer Authority, over all Common Elements or Lots for the setting, removing and reading of water

meters (which shall be separate for each Finished Unit), for police protection, fire fighting, postal service, and garbage collection, sidewalk repair or other right of way work and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property.

Section 6. Easement for Benefit of Utility Company. The Declarant reserves the right to subject the Property, including the Common Elements, to a contract with Duke Power for the installation of underground electric lines, cables and connector post or for the installation of street lighting, either or both of which, may require an initial payment or a continuing monthly payment to the utility by the owner of each Lot. The Declarant reserves the right to subject the Property to other utility providers for telephone, cable, gas service or any other utilities reasonably necessary for the use and enjoyment of the Property.

Section 7. Priority of Easements. Each of the easements set forth in this Article shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Elements, as the case may hereafter be applied against or in favor of the Property or any portion thereof.

Section 8. Declarant Easement. Every Lot shall be subject to an easement for the entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected lot or lots to as near the original condition as practicable.

Section 9. Structural Support. Every portion of a townhome which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other townhomes within the Building.

Section 10. Emergencies. Every Lot and townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any townhome and that endangers any building or portion of the Common Elements.

Section 11. Maintenance Easement. The Association reserves an easement over and across every Lot for the purpose of performing the maintenance requirements of the Association as prescribed herein, including but not limited to the maintenance or repair of utility lines on or under individual Lots. This maintenance easement in favor of the Association may be granted or assigned by the Association at the direction of the Association's Board of Directors to the applicable utility companies for the purposes prescribed herein.

## ARTICLE X

### INSURANCE

Section 1: Premiums. The premiums for insurance policies shall be deemed a common expense and shall be paid as part of the Annual Assessment, collected monthly, for each Lot in Franklin Grove. The premium for liability coverage as well as hazards over the Common Area will be equally distributed over the total number of units of Franklin Grove. However, the cost of hazard insurance for each Finished Unit will be prorated to each townhome based on its cost as a

percentage of the total cost constructed and insured at any one point in time. This percentage will be multiplied by the premium amount of the policy as further addressed in Article 5, Section 7 herein and added to the base homeowner's dues for each Finished Unit. The additional hazard insurance premium portion of the dues shall be set as of the first day of the month following the conveyance to any third party and will remain constant through the end of the current insurance period or December 31<sup>st</sup> of any given year. The total policy premium for all townhome units will be reviewed annually on or before November 30th each year and individual Finished Unit Owner dues will be indexed in proportion with its percentage of the total policy.

**Section 2:** Insurance on Buildings and Structures Owned by Association. The Board of Directors shall have the authority to and shall obtain insurance for all buildings and structures owned by the Association against loss or damage by fire or other hazards in an amount equal to the maximum insurable replacement value (100% of current replacement costs) as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage such that the coverage will be sufficient to cover the costs of all repair or reconstruction work necessitated by damage or destruction from any insurable hazard.

**Section 3:** Public Liability Insurance to be Maintained by Association. The Board of Directors shall have the authority to and shall also obtain a broad form public liability policy covering all Common elements and all damage or injury to person or property caused by the negligence of the Association or any of its agents.

**Section 4:** Insurance on Buildings Owned by Lot Owners. The Board of Directors shall have the authority to, and shall obtain insurance for, all buildings owned by individual Lot Owners against loss or damage by fire, extended casualty or other hazards in an amount equal to the maximum insurable replacement value (100% of current replacement costs) as determined annually by the insurance company with the assistance of the Board of Directors of the Association for insurance coverage that will be sufficient to cover the full replacement cost of any repair or reconstruction work necessitated by damage or destruction from any insurable hazard. This master or blanket policy shall insure against damage to the roof, party wall, foundations, supports, and basic structure of the building as well as all original attachments including but not limited to electrical fixtures, plumbing and bath fixtures, attached appliances, security systems, cabinetry and all other attachments not typically construed as movable personal property. The policy shall be delivered by the insurance company and the Association Board of Directors on an annual basis and so that the insurable value may be adjusted to reflect any major improvements to any of the units as well as increases in the cost of repair or replacement. In the event of any conflict between the terms and conditions set forth herein and the terms and conditions of any policy of hazard insurance duly obtained by and through the responsible actions of the Board of Directors, then the terms and conditions of the actual policy shall control.

**Section 5:** Assessments if Necessary. In the context of Article Five, Sections 2 and 4, if the proceeds of the hazard insurance are insufficient to defray the estimated costs of reconstruction and/or repair, the Board of Directors shall have the authority to impose one or more special assessments in the amount sufficient to provide funds for such reconstruction or repair against all the individual Lot owners without the requirements of an affirmative vote of the Lot Owners. The Lot Owner or Owners for which a claim arises will be responsible for the deductible of that claim which may not exceed \$1000.00. In the event that more than one (1) Unit is damaged by a single occurrence the deductible will be prorated between the damaged Units without need of recognition of where or how the claim was initiated.

**Section 6:** Named Insured. All insurance policies required as set forth herein will be obtained in the name of the Association and will designate not only the individual Lot Owner and said Owner's mortgagees but also the Franklin Grove Homeowners' Association, Inc., through its Board of Directors, as a loss payee, as their interests may appear, and will include a waiver of subrogation against the Owner, and Owner's employees or agents that may not be cancelled or

substantially modified without a minimum of thirty (30) days prior written notice to the Association and all insured's, including all Owners and mortgages; That no act or omission by any Owner will preclude recovery upon such policy and, that if, at the time of loss under the policy there is other insurance in the name of the Owner covering the same not covered by the policy, the Association's policy provides primary insurance.

**Section 7:** Receipt of Insurance Proceeds and Authorization to Construct. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of a Lot Owner designating the Association as a loss payee, the Board of Directors and the individual Lot Owner or Owners shall upon receipt of the insurance proceeds, contract jointly to rebuild, repair, restore or reconstruct, including the removal of debris such damage or destroyed portions of the property to as good condition as formerly and within one hundred eighty (180) days of authorization to proceed by the insurance company. Prior to entering into a contract for the repair, the Board of Directors and Lot Owner shall obtain a minimum of two competitive bids and mutually agree on the contractor chosen. In the event of a disagreement between the Board of Directors and the Lot Owner regarding the hiring of a contractor to complete the repair of the damaged or destroyed property, the Board of Directors shall be empowered to make a final decision.

**Section 8:** Lot Owner's Responsibility for Coverage. Each individual Lot Owner shall be solely and exclusively responsible for obtaining insurance coverage for said Owner's personal possessions and personal general liability insurance.

## ARTICLE XI

### RIGHTS OF INSTITUTIONAL LENDERS

**Section 1.** Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and other reputable mortgage lenders, guarantors and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon a Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- (A) Upon written request, to be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished within 120 days of the end of calendar year.
- (B) To be given notice of default in the payment of assessments by the Owner of a Lot of sixty (60) days or more encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.
- (C) To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours to obtain copies thereof.
- (D) To be given notice by the Association of any substantial damage to any part of

the Common Elements.

- (E) To be given notice by the Association of any portion of the Common Elements, which is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.
- (F) To be given notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (G) Any proposal requiring consent of the mortgage holders.

Whenever any Institutional Lender desires the benefits of the provisions of this section, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding of law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by the Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. General Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

Section 4. Amendments Permitted Without Membership Approval. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members:

- (A) Prior to the sale of the first Lot, this Declaration may be amended by the Declarant.
- (B) Declarant may amend this Declaration upon annexation of additional lands as specified in Article VII, Section 2 herein.

- (C) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.
- (D) The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

Section 5. Governmental Authority Amendments. No amendment, including termination, which would change or delete any provision herein, shall become effective until submitted to and approved by the Chapel Hill Town Attorney or his designee; provided, however, if this authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

Section 6. FHA/VA Approval. As long as there is Class B membership and if Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Common Elements, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. Recordation. No amendment shall be effective until recorded in the County in which the Property is situated.

FIRST INDIANA BANK, N.A., as Beneficiary, and James M. Day, as Trustee, join in the execution of this instrument for the sole purpose of subordinating its respective lien of the deed of trust recorded in Book 2544, Page 344, and re-recorded in Book 2594, Page 521, Orange County Registry, to this Declaration to the same extent as if this Declaration had been executed and recorded prior to the recording of the aforesaid Deed of Trust.

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IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed in its corporate name, with its corporate seal affixed, by order of its Board of Directors, on the day and year first above written.

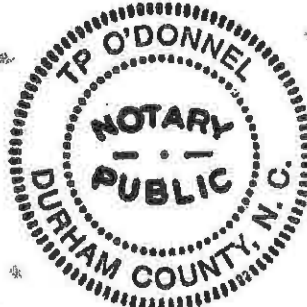
Capkov Ventures, Inc., Declarant

By: [Signature]  
Scott J. Kovens, President

Attest:

[Signature]  
Eric B. Chupp, Secretary

corporate seal



NORTH CAROLINA - COUNTY OF Orange

I, TP O'Donnel, a notary public in and for <sup>Durham</sup> said county and state do hereby certify that Eric B. Chupp personally came before me this day and acknowledged that he is Secretary of Capkov Ventures, Inc., a North Carolina corporation, and that by authority duly given and in an act of the corporation, the foregoing instrument was signed in its name by its President, ~~with its corporate seal, and attested by its Secretary.~~ <sup>October</sup>

Witness my hand and notarial seal, this the 1 day of ~~March~~, 2003.

My commission expires:

4-16-2005

[Signature]  
Notary Public

FIRST INDIANA BANK, N.A., Noteholder (Seal)

[Signature] (Seal)  
David H. [unclear] President

[Signature] (Seal)  
James M. Day

My commission expires:

Notary Public

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NORTH CAROLINA - COUNTY OF

I, \_\_\_\_\_, a notary public in and for said county and state  
do hereby certify that JAMES M. DAY, Trustee, personally came before me this day and  
acknowledged the due execution of the foregoing.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of March, 2003.

My commission expires:

Notary Public

STATE OF INDIANA - COUNTY OF Marion

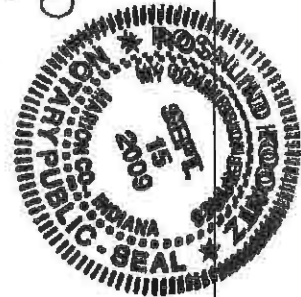
I, Rosalind Koontz, a notary public in and for said county and state do  
hereby certify that David Misner personally came before me this day and  
acknowledged that he is vice President of First Indiana Bank, N.A., Beneficiary, and  
that by authority duly given and as an act of the corporation, the foregoing instrument was signed  
in its name by him/her as its vice President.

Witness my hand and notarial seal, this the 30 day of Sept. March, 2003.

My commission expires:

Rosalind Koontz  
Notary Public

Rosalind Koontz





Joyce H. Pearson  
Register of Deeds  
Orange County  
North Carolina

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**State of North Carolina, County of Orange**

The foregoing certificate(s) of ROSALIND KOONTZ, NOTARY PUBLIC, TP O'DONNEL, NOTARY PUBLIC for the Designated Governmental units is/are certified to be correct. See filing certificate herein.

This day October 2, 2003.

Joyce H. Pearson, Register of Deeds

BY: Wendy R. Dixon  
Deputy / Assistant Register of Deeds